

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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| UNITED STATES OF AMERICA, |) | CASE NO. 3:12-cr-58-LRH-WGC |
| |) | |
| Plaintiff, |) | MINUTES OF COURT |
| |) | |
| vs. |) | DATE: Monday, September 30, 2013 |
| |) | |
| F. HARVEY WHITTEMORE, |) | |
| |) | |
| Defendant. |) | |
| |) | |

PRESENT: THE HONORABLE LARRY R. HICKS, U.S. DISTRICT JUDGE

Deputy Clerk: Dionna Negrete Reporter: Donna Davidson

Counsel for Plaintiff: Steven W. Myhre and Eric Olshan

Counsel for Defendant: Dominic P. Gentile and Justin Bustos

MINUTES OF SENTENCING HEARING:

1:33 p.m. Court convenes. Defendant is present on bond with counsel. Counsel for the Government is present. The Court gives a brief summary of the case to date, has read and reviewed the Presentence Investigation Report, sentencing memorandums of the defendant and Government. Further, the Court has read and reviewed 67 letters submitted in support of the defendant. Mr. Gentile inquires if any additional letters have been submitted. The Court indicates that three additional letters have been submitted to the Court. Mr. Gentile requests those letters be filed and made a part of the record. IT IS SO ORDERED. Mr. Gentile further inquires regarding a possible letter submitted by Senator Reid. The Court assures counsel that there have been no letters received, and no communications with Senator Reid. Factual and Sentencing Guideline calculation arguments are presented by counsel regarding objections to the Presentence Investigation Report. Paragraph 11, objection is DENIED. Paragraph 12, objection is SUSTAINED the word "controversial" is stricken. Paragraph 13, objection is SUSTAINED and modified as indicated on the record. Paragraph 14 objection, OVERRULED. Paragraph 26, objection is SUSTAINED and modified as indicated on the record. Paragraph 27, objection is SUSTAINED and the entire paragraph is stricken. Paragraph 28, objection is OVERRULED.

3:30 p.m. Court stands at recess.

3:36 p.m. Court reconvenes. The defendant and counsel are present. Paragraph 35, objection is OVERRULED. Paragraph 36, objection is OVERRULED. Paragraph 38, objection is OVERRULED. Paragraph 39, objection is SUSTAINED. Paragraph 41, objection is OVERRULED.

USA v. Whittemore
3:12-cr-58-LRH-WGC
Sentencing Hearing
September 30, 2013
Page 2 of 2

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The Court adopts the Sentencing Guidelines as modified on the record. Mr. Gentile addresses the Court by way of allocution on behalf of the defendant. Ellen Whittemore addresses the Court on behalf of the defendant. Mr. Gentile presents further arguments as to the 3553 (a) factors, in support of a downward variance. The defendant makes a statement to the Court.

5:39 p.m. Court stands at recess.

5:52 p.m. Court reconvenes. The defendant and counsel are present. Mr. Myhre responds on behalf of the Government. Mr. Gentile replies. IT IS ORDERED that a five level downward variance is GRANTED. The Court addresses the parties, places his findings on the record, and adopts the sentencing justifications in paragraphs 119 - 124 of the Presentence Investigation Report. Sentence is imposed as to Count 1, 2 and 3 of the Indictment filed 6/6/13. A written copy of the conditions of release is provided to defendant in open Court. Defendant is advised of the right to file an appeal. The Court finds that the sentence imposed is sufficient, but not greater than necessary, to comply with the requirements set forth in 18 U.S.C. 3553(a). Mr. Gentile requests a 120 days for defendant to self surrender. Mr. Myhre objects to 120 day surrender date, but does not oppose a self surrender. IT IS ORDERED that the defendant is granted a stay of execution of sentence, and shall report to the designated facility of the Bureau of Prisons before noon on Friday, 1/31/14. IT IS FURTHER ORDERED that bond is exonerated on or after the date fixed for surrender. Defendant is released on the previously order terms and conditions of Pretrial Release until surrender. Court adjourns.

LANCE S. WILSON, CLERK

By: Dionna Negrete
Deputy Clerk